IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NOS.35, 36, 37 AND 38 OF 2005

CRIMINAL REVISION APPLICATION NO.35 OF 2005

Shri Sanjay Pandurang
Wadiyekar,
Aged 22 years,
Major,
Resident of Kutwal,
Alorna, Pernem, Goa. ... Applicant

versus

State,
Through Public Prosecutor. ... Respondent

CRIMINAL REVISION APPLICATION NO.36 OF 2005

Shri Mahadev Pandurang
Arondekar, Aged about
45 years, Major,
r/o Kutwal, Alorna,
Pernem, Goa. ... Applicant

versus

State,
Through Public Prosecutor. .. Respondent

CRIMINAL REVISION APPLICATION NO.37 OF 2005

Shri Umesh Mahadev
Arondekar, Aged 20 years,
Major, Resident of Kutwal,
Alorna, Pernem, Goa. ... Applicants

versus

State,
Through Public Prosecutor. ... Respondent

CRIMINAL REVISION APPLICATION NO. 38 OF 2005

Shri Namdev Mahadev
Arondekar,
Aged 25 years, Major,
Resident of Kutwal,
Alorna, Pernem, Goa. ... Applicant

versus

State,
Through Public Prosecutor. .. Respondent

Mr. Arun Bras De Sa, Advocate for the Applicants in all the applications.

Ms. W. Coutinho, Public Prosecutor for the Respondent in all the applications.

CORAM : N. A. BRITTO, J.

DATE : 8TH JUNE, 2006.

O R D E R

These revision petitions are by the accused who have been convicted and sentenced in C. C. No.44/S/94 under Section 326, 324 r/w 34 I.P.C. by the learned J.M.F.C., Pernem and whose appeals have been dismissed by the learned Sessions Judge, Panaji, vide Judgment dated 30-9-2005.

2. The accused were charged and tried under Section 326 I.P.C. with an allegation that on 29-3-1994 at about 6.00 p.m. at Khutwal, Pernem, the accused in furtherance of the common intention assaulted PW1/Anand Mahadev, PW5/Rama Naik, PW10/Sakaram Naik, PW11/Sitabai Naik, PW12/Vishram Mahale and PW13/Sadanand Naik with dandas and pal koitas thereby causing grievous injuries to PW5/Rama Naik, PW10/Sakaram Naik and PW12/Vishram Mahale and simple injuries to others. In support of the charge, prosecution examined 20 witnesses.

3. The case of the accused is that the said PW5/Rama Naik, PW13/Sadanand Naik along with 20 other persons had gone to the house of the accused at about 7 p.m. with pal koitas, choppers and dandas and assaulted the accused, as could be seen from the suggestions put in the cross-examination of some of the prosecution witnesses but according to A-1/Mahadev Arondekar it is they who came to their house and assaulted them and they also broke the tiles of their house and the tube lights and they had lodged a complaint with the Police but the Police did not take any action. It may be noted that no such version can be seen from the complaint-Exh.PW20/A produced on behalf of the accused through the Investigation Officer PW20/A.S.I. Tikekar.

4. A-1/Mahadev Arondekar is the father of A-2/Namdev Arondekar. A-3/Umesh Arondekar and A-4/Sanjay Wadiyekar are their neighbours. PW1/Anand and PW4/Vaishali are the children of PW8/Anandi. PW5/Rama Naik is the maternal uncle of PW1/Anand and PW13/Sadanand Naik is the cousin brother of PW1/Anand. The families of the first three accused and that of PW5/Rama Naik are close neighbours but had a dispute as regards a cashew plantation and the incident took place after

PW4/Vaishali Mahale and PW12/Vishram Mahale had returned from the cashew plantation. The incident took place in the courtyard of the house of complainant PW1/Anand. This is evident not only from the evidence of the scene of offence panch witnesses namely, PW2/Shambaji Naik and PW3/Prakash Parab but also from the evidence of the I.O. PW20/Mahadev Tikekar. PW14/Raghoba Naik and PW15/Kashinath Mistre who were at the tea shop, on hearing the noise from the house of PW1/Anand, came to the scene and saw PW12/Vishram Mahale, PW13/Sadanand Naik, PW10/Sakharam Naik, PW11/Sitabai Parab and PW5/Rama Naik fallen down with bleeding injuries in the courtyard of PW1/Anand and PW10/Sakharam Naik, PW12/Vishram Mahale and PW13/Sadanand Naik were lying unconscious. PW14/Raghoba also saw the accused persons had dandas and one or two of them had pal koitas in their hands. PW15/Kashinath Mistre also saw blood in the courtyard of PW1/Anand and the injured were put in a tempo and taken to Pernem Police Station where PW1/Anand lodged his complaint. The injured were then taken to Asilo Hospital at Mapusa where PW16/Dr. Sachin Govekar examined PW12/Vishram Mahale who was found with traumatic amputation of the right hand, about 2

cms. above the wrist and which was hanging only on the volar of the tissues. Eventually, it appears that the hand of PW12/Vishram Mahale could be saved. PW12/Vishram Mahale was also found with two CLWs, one on the right forehead and the other on the occipital region. PW11/Sitabai Parab was found with a swelling on the left forehead, a CLW on the right frontal region and a bruise on the right forearm. PW1/Anand had a diffused traumatic swelling on the mid leg. The evidence of PW17/Dr. Carlos Barreto and that of PW18/Dr. Shivanand Bandekar shows that PW10/Sakharam Naik was admitted in G.M.C. on 29-3-1994 with supra condilar fracture Grade III with fracture of tibia fibula of left leg with neuro vascular deficit and on the next day above knee amputation had to be carried out on emergency basis. He was discharged on 17-4-1994. Needless to observe that PW10/Sakharam Naik lost his leg in the incident. PW12/Vishram Mahale was admitted in G.M.C. on 23-9-1994 with Grade III Open Comminuted fracture of the lower end of radius and ulna with extensor tendon injury without neuro vascular deficit. Wound debridement with external fixation of radius and ulna with repairs of extensor tendons was done on emergency basis on 30-3-1994, as a result of which the hand of

PW12/Vishram Mahale appears was saved. PW5/Rama B. Naik was admitted in G.M.C. on 30-3-1994 with compound fracture of left lateral malleolus with intra articular fracture tibia of left leg without neuro vascular deficit. Wound debridement, suturing and internal fixation of fracture was carried out on emergency basis with ligation of dorsalis pedis artery and he was discharged on 31-3-1994.

5. There is no doubt that there are some inconsistencies in the evidence given by PW1/Anand, PW4/Vaishali Mahale, PW5/Rama Naik, PW8/Anandi, PW9/Vassant Naik, PW10/Sakharam Naik, PW11/Sitabai Parab, PW12/Vishram Mahale and PW13/Sadanand Naik but there is also corroboration in their evidence which has been rightly considered by the Courts below and particularly by the learned Sessions Judge and what is reassuring is that there is further corroboration by way of medical evidence as regards injuries suffered by them and as regards to which the accused have not been able to provide any explanation whatsoever. All that the accused tried to create is a smoke screen stating that the party of PW1/Anand and others had assaulted them and they had filed a complaint against them

regarding which no action was taken. Although, the accused examined three witnesses to support their defence, none of them were able to throw any light as regards the grievous injuries suffered by the prosecution witnesses or the injuries which the accused allege that they too suffered. On behalf of the accused, an application was filed when the case had reached at the stage of arguments producing certain xerox copies of hurt certificates, which in my view ought to have been ignored by both the Courts below. It is to be noted that the prosecution had examined three Medical Officers and at that stage the accused chose not to cross-examine any of the said three Medical Officers with reference to the certificates if at all they were issued after the accused were examined. The learned Sessions Judge has rightly observed that the accused had not examined the doctor who had examined them or the doctor who had treated them inspite of the fact that one of the certificates was issued by PW18/Dr. **B**andekar. The mode of proving facts is the same for the prosecution as well as for the defence, the degree of proof required being different i.e. higher for the prosecution and much lower for the accused. That apart, the swelling and abrasion on A-1/Mahadev Arondekar and the CLW on the occipital region of

A-2/Namdev Arondekar, the swelling on the left hand of A-4/Sanjay Wadiyekar etc. were all simple in nature and could have been caused in the scuffle which might have taken place, the prosecution witnesses trying to defend themselves, for it was not expected that they would not allow to be assaulted in the manner they did with their hands in their pockets. Even if the said injuries were held to be proved they do not tend to show that the prosecution witnesses were the aggressors. The gravity of the injuries suffered particularly by PW5/Rama Naik, PW10/Sakharam Naik and PW12/Vishram Mahale and the fact that they were all found fallen in the courtyard shows that it is the accused who were the aggressors. In fact, the complaint of A-1/Mahadev Arondekar produced at Exh.PW20/A shows that it relates to an incident which took place either at 9.00 hours or 7 p.m. on 29-3-1994 and it also relates to an incident by which the accused were wrongfully confined in their houses and if that is the case there is no explanation whatsoever as to how the accused came to be found particularly by PW14/Raghoba Naik and PW15/Kashinath Mistre with dandas and one or two of them with pal koitas standing near about the place where the injured had fallen on the ground.

6. Although, there are some contradictions in the evidence of some of the injured witnesses this is not a case where it could be said that the evidence is totally unreliable and it is impossible to separate the truth from falsehood to an extent that they are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made, as noted by the Apex Court in the case of **Narain** v. **State of M.P.** ((2004) 2 SCC 455). It is also not the case where two views are possible, to accept the view in favour of the accused, as noted by the Apex Court in the case of **Raghunath** v. **State of Haryana and another**((2003) 1 SCC 398) relied upon by the defence counsel. This is a case where although there are inconsistencies in the versions of some of the witnesses there is also consistency in the version of others and which consistency is further corroborated by medical evidence, as already stated. The contention that the accused could not pursue their complaint cannot be accepted at all for the accused were not arrested till 5-4-1994 and subsequently were on bail from 10-6-1994. In fact, the accused did not examine the P.S.I. L. D'Souza who had

recorded the said complaint-Exh.PW20/A and it does appear that the said case was rightly treated as A Summary, from what has been stated by PW20/Mahadev Tikekar.

7. As noted by the learned Sessions Judge, the evidence of PW12/Mahadev Tikekar shows that he was returning home when A-4/Sanjay Wadiyekar rushed towards him with a danda and hit on his head and when he raised his hand to avoid the blow, A-1/Mahadev Arondekar had hit with pal koita on his right hand which statement is amply corroborated by PW4/Vaishali Mahale and PW8/Anandi Mahale and when PW4/Vaishali Mahale shouted for help PW1/Anand, PW5/Rama Naik, PW10/Sakharam Naik, PW11/Sitabai Parab and PW13/Sadanand Naik reached the scene and PW1/Anand, PW5/Rama Naik, PW10/Sakharam Naik, PW11/Sitabai Parab and PW13/Sadanand Naik were assaulted. The version of PW10/Sakharam Naik shows that A-2/Namdev Arondekar hit the pal koita on his left leg and this is amply corroborated by PW13/Sadanand Naik and PW9/Vassant Naik. The version of PW11/Sitabai Parab as well as PW1/Anand show that A-2/Namdev Arondekar had hit a danda on PW11/Sitabai Parab. PW9/Vassant Naik, PW14/Raghoba Naik and

PW15/Kashinath Mistre are all independent witnesses and though PW14/Raghoba Naik and PW15/Kashinath Mistre did not witness the actual incident they had seen PW5/Rama Naik, PW10/Sakharam Naik, PW11/Sitabai Parab, PW12/Vishram Mahale and PW13/Sadanand Naik fallen in the courtyard and the former saw the accused persons with dandas or pal koitas in their hands. In my view, this is not a case where any evidence has been discarded, as contended, but in fact the defence evidence which ought to have been discarded has otherwise been considered and rightly rejected. The accused have given no explanation whatsoever for the grievous injuries suffered by PW5/Rama Naik and PW10/Sakharam Naik who had to lose his leg and PW12/Vishram Mahale who missed losing his hand. PW1/Anand had promptly lodged the F.I.R. implicating all the accused and it appears that the accused as a counter blast and afterthought filed the said complaint-Exh.PW20/A against Ashok Surya Parab and 19 others i.e. on 30-3-1994 at about 16.15 hours and which it appears was rightly treated as A Summary. Although, there was a scope for a conviction under Section 325 I.P.C., the accused have been convicted under Section 324 in addition to Section 326 I.P.C. The accused have been guilty of

causing grievous injuries and both the Courts below after considering the evidence have rightly convicted the accused. In my view, no interference is called for in revisional jurisdiction. Hence, the revision petitions filed by the accused are hereby dismissed.

N. A. BRITTO, J.

RD